

## § 803.10

## 16 CFR Ch. I (1–1–11 Edition)

Commission, and shall be submitted to the Premerger Notification Office of the Federal Trade Commission along with the Notification and Report Form.

(2) Fees paid by EWT shall be deposited to the Treasury's account at the New York Federal Reserve Bank. Specific instructions for making EWT payments are contained in the Instructions to the Notification and Report Form.

(e) *Refunds.* Except as provided in this paragraph, no filing fee received by the Commission will be returned to the payer and no part of the filing fee shall be refunded. The filing fee shall be refunded only if the Commission's staff determines, based on the information and representations contained in the filing person's notification, that premerger notification was not required by the act. Once the Commission's staff has determined that the notification was required, the filing fee shall not be refunded even if it appears at the time of consummation that the transaction does not meet the reporting requirements established in the act.

[66 FR 8695, Feb. 1, 2001, as amended at 68 FR 2431, Jan. 17, 2003; 70 FR 4997, Jan. 31, 2005]

### § 803.10 Running of time.

(a) *Beginning of waiting period.* The waiting period required by the act shall begin on the date of receipt of the notification required by the act, in the manner provided by these rules (or, if such notification is not completed, the notification to the extent completed and a statement of the reasons for such noncompliance in accordance with § 803.3) from:

(1) In the case of acquisitions to which § 801.30 applies, the acquiring person;

(2) In the case of the formation of a corporation covered by Sec. 801.40 or an unincorporated entity covered by Sec. 801.50, all persons contributing to the formation of the joint venture or other corporation that are required by the act and these rules to file notification;

(3) In the case of all other acquisitions, all persons required by the act and these rules to file notification.

(b) *Expiration of waiting period.* (1) Subject to paragraph (b)(3) of this sec-

tion, for purposes of Section 7A(b)(1)(B), the waiting period shall expire at 11:59 p.m. Eastern Time on the 30th (or in the case of a cash tender offer or of an acquisition covered by 11 U.S.C. 363(b), the 15th) calendar day (or if § 802.23 applies, such other day as that section may provide) following the beginning of the waiting period as determined under paragraph (a) of this section, unless extended pursuant to Section 7A(e) and § 803.20, or Section 7A(g)(2), or unless terminated pursuant to Section 7A(b)(2) and § 803.11.

(2) Unless further extended pursuant to Section 7A(g)(2), or terminated pursuant to Section 7A(b)(2) and § 803.11, any waiting period which has been extended pursuant to Section 7A(e)(2) and § 803.20 shall, subject to paragraph (b)(3) of this section, expire at 11:59 p.m. Eastern Time—

(i) On the 30th (or, in the case of a cash tender offer or of an acquisition covered by 11 U.S.C. 363(b), the 10th) day following the date of receipt of all additional information or documentary material requested from all persons to whom such requests have been directed (or, if a request is not fully complied with, the information and documentary material submitted and a statement of the reasons for such noncompliance in accordance with § 803.3), by the Federal Trade Commission or Assistant Attorney General, whichever requested additional information or documentary material, at the office designated in paragraph (c) of this section, or

(ii) As provided in paragraph (b)(1) of this section, whichever is later.

(3) If any waiting period would expire on a Saturday, Sunday, or legal public holiday (as defined in 5 U.S.C. 6103(a)) the waiting period shall be extended to 11:59 p.m. Eastern Time of the next regular business day.

(c)(1) *Date of receipt and means of delivery.* For purposes of this section, these procedures shall apply.

(i) For paper copy filings, the date of receipt shall be the date on which delivery is effected to the designated offices (Premerger Notification Office, Room 303, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, and Director of Operations, Antitrust Division, Department

## Federal Trade Commission

## § 803.11

of Justice, 950 Pennsylvania Avenue, NW., Room #3335, Washington, DC 20530) during normal business hours. Delivery should be effected directly to the designated offices, either by hand or by certified or registered mail. In the event one or both of the delivery sites are unavailable, the FTC and DOJ may designate alternate sites for delivery of the filing. Notification of the alternate delivery sites will normally be made through a press release and, if possible, on the <http://www.ftc.gov> and <https://www.hsr.gov> Web sites.

(ii) For electronic filings, the date of receipt shall be the date on which delivery of the electronic filing package is effected to the server maintained by the FTC for the purpose of receiving electronic filings.

(iii) For electronic filings with paper copy submission of all attachments, the date of receipt shall be either the date on which delivery of the electronic filing package is effected to the Federal Trade Commission's server or the date on which delivery of the attachments is effected to the designated offices as provided in paragraph (c)(1)(i) of this section, whichever is later.

(iv) Delivery effected after 5 p.m. eastern time on a business day, or at any time on any day other than a business day, shall be deemed effected on the next following business day. If delivery of all required filings to all offices required to receive such filings is not effected on the same date, the date of receipt shall be the latest of the dates on which delivery is effected.

*Example:* In an acquisition other than a tender offer, assume that requests for additional information are issued to both the acquiring and acquired persons on the 26th day of the waiting period. One person submits the additional information on the 35th day, while the other responds on the 44th day. Under this section, the waiting period expires thirty days following the last receipt of additional information, that is, it expires on the 74th day (unless that day is a Saturday, Sunday or legal public holiday).

(2) *Deficient filings.* If notification or a response to a request for additional information or documentary material received by the Commission or Assistant Attorney General does not comply with these rules, the Commission or the Assistant Attorney General shall promptly notify the person filing such

notification or response of the deficiencies in such filing, and the date of receipt shall be the date on which a filing which complies with these rules is received.

[43 FR 33548, July 31, 1978; 43 FR 36054, Aug. 15, 1978, as amended at 52 FR 7083, Mar. 6, 1987; 66 FR 8696, Feb. 1, 2001; 70 FR 11514, Mar. 8, 2005; 71 FR 35998, June 23, 2006]

### § 803.11 Termination of waiting period.

(a) Except as provided in paragraph (c) of this section, no waiting period shall be terminated pursuant to section 7A(b)(2) unless—

(1) All notifications required to be filed with respect to the acquisition by the act and these rules (or, if such notification is not completed, the notification to the extent completed and a statement of the reasons for such non-compliance in accordance with § 803.3) have been received,

(2) It has been determined that no additional information or documentary material pursuant to section 7A(e) and § 803.20 will be requested, or, if such additional information or documentary material has been requested, it (or, if a request is not fully complied with, the information and documentary material submitted and a statement of the reasons for such noncompliance in accordance with § 803.3) has been received, and

(3) The Federal Trade Commission and the Assistant Attorney General have concluded that neither intends to take any further action within the waiting period.

(b) Any request for additional information or documentary material pursuant to section 7A(e) and § 803.20 shall constitute a denial of all pending requests for termination of the waiting period.

(c) The Federal Trade Commission and the Assistant Attorney General may in their discretion terminate a waiting period upon the written request of any person filing notification or, notwithstanding paragraph (a) of this section, sua sponte. A request for termination of the waiting period shall be sent to the offices designated in § 803.10(c). Termination shall be effective upon notice to any requesting person by telephone, and such notice shall be given as soon as possible. Such notice shall also be confirmed in writing